

Members

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Rep. James Bottorff
Rep. Markt Lytle
Rep. William Friend
Rep. Jack Lutz
Rep. Dean Young
Sen. Thomas Weatherwax, Vice-Chairperson
Sen. Johnny Nugent
Sen. John Waterman
Sen. James Lewis
Sen. Larry Lutz
Sen. Richard Young



WATER RESOURCES STUDY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Timothy Tyler, Attorney for the Committee
Bernadette Bartlett, Fiscal Analyst for the Committee

Authority: IC 2-5-25

MEETING MINUTES¹

Meeting Date: October 26, 2004
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St., Room 156-A
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Dennie Oxley, Chairperson; Rep. James Bottorff; Rep. Markt Lytle; Rep. William Friend; Rep. Jack Lutz; Sen. James Lewis.

Members Absent: Rep. Dean Young; Sen. Thomas Weatherwax, Vice-Chairperson; Sen. Johnny Nugent; Sen. John Waterman; Sen. Larry Lutz; Sen. Richard Young.

Representative Dennie Oxley, Chairperson of the Water Resources Study Committee (Committee), called the meeting to order at 1:07 p.m.

Representative Oxley stated the Department of Natural Resources (DNR) had recently stopped inspecting privately owned high hazard dams and that the owners of these dams were now responsible for inspections. He said he had been told the cost of these inspections was excessive and some owners were having a difficult time paying for them.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

The first person to testify was Ken Smith, Assistant Director from the DNR Division of Water. Mr. Smith said that, by statute [IC 14-27-7.5-8], there were three dam classifications in Indiana. He said these three classifications included high hazard dams, significant hazard dams, and low hazard dams. Mr. Smith said that the statute described a high hazard dam as a "structure the failure of which may cause the loss of life and serious damage to homes, industrial and commercial buildings, public utilities, major highways, or railroads."

Mr. Smith continued by stating there were more than 1,200 dams in Indiana. He said the DNR only had two technicians and one engineer assigned to inspect all these dams. He stated that, because of this, dam inspections were always behind schedule. Mr. Smith also said that just because a dam had been inspected did not mean the dam was safe.

Mr. Smith said that in 2002 the General Assembly enacted a law to require private owners of high hazard dams to have the dams inspected at least one time every two years and submit a report of the inspection to the DNR. He stated that, before this law was enacted, most private owners of high hazard dams assumed the government would "take care of" the dams. He said the state had been assuming risk by inspecting dams without doing anything else.

Mr. Smith continued by stating Indiana was not the first state to require private inspections of dams. He cited Illinois as an example of a state that required all private owners of dams to have their dams inspected.

Mr. Smith said that, since the 2002 law went into effect, private owners of dams were beginning to see themselves and not the state as the true owners of the dams. He said this caused many dam owners to begin to question whether their dam is even needed anymore. He also said the 2002 law made it more likely private dam owners would respond more promptly to dam emergencies.

Mr. Smith stated most dam owners were also just beginning to realize the costs and liabilities associated with dam ownership. He said that the typical fee charged by engineering firms to inspect a small or medium sized high hazard dam was between \$2,000 and \$3,500. He added that most of these firms were taking a loss on dam inspections to establish a business relationship with dam owners because the firms realized most of their profits would be made in repairing or removing dams.

Mr. Smith said most dams built in the United States were built between 1950 and 1970. He said ongoing maintenance had been neglected at most dams and now almost all of these structures needed repairs.

Mr. Smith continued by stating dam owners should have an emergency action plan in place and a dedicated funding source to pay for inspections and repairs. He said owners should also disclose the status of their dams to the appropriate local government entities and to people who own property downstream if their property could be damaged by a dam failure. Mr. Smith also said that, after "9/11," owners of high hazard dams should be aware that their dams could become targets for terrorists and should begin to consider dam security issues.

In response to questions from Committee members, Mr. Smith said DNR had asked that an emergency action plan requirement be included in the 2002 legislation. However, he said because it was estimated that the costs of these plans could run anywhere from \$10,000 to \$40,000 per plan, the requirement was removed from the bill.

Mr. Smith also said DNR enforcement powers concerning dams were limited before the 2002 legislation was enacted. He said most enforcement actions require the state to bring an action in court to force compliance with state law. He said this litigation usually requires more staff time and other resources than the DNR could afford.

Representative Oxley then stated he had been contacted by the Schnellville Conservation Club in DuBois County about the costs of dam inspections. He said the Club had taken over ownership of a government built dam on a government built lake and that the costs of dam inspections were "going through the roof." He asked Mr. Smith what options were available for dam owners like this Club.

Mr. Smith responded by stating he would hate to see the state return to the system in place before the 2002 legislation was enacted. He said more than 60% of the private dam owners who were required to file an inspection report with the DNR before July 1 had done so. He said conservancy districts had the authority to tax property in the district to raise funds for dam inspections and repairs.

Mr. Smith also stated it was possible this dam owned by the Club could be removed. He said most dams were used to create recreation areas for people who lived near the dam and were not used to provide flood protection.

Representative Oxley said he too was not interested in returning the responsibility for dam inspections back to the state. He said he was interested in helping those people who did not have the money to pay for dam inspections and repairs and would work with the DNR to find some solutions.

Mr. Smith stated that, looking beyond funding for inspections, it was estimated that \$40 billion would be needed nationwide to upgrade all dams that were not owned by the federal government. He said that the estimate to upgrade all high hazard dams in Indiana was between \$200 million and \$300 million.

Mr. Smith then discussed a press release (Exhibit 1) concerning a federal dam rehabilitation assistance bill introduced by Congresswoman Sue Kelly of New York. Mr. Smith stated that this bill would create funding programs to help repair publicly owned dams nationwide. He said, if this bill passes, Indiana should find a way to participate in these programs. However, he said the bill would not create funding sources for privately owned dams. He stated that, for these private dams, the state may want to create revolving loan programs or grant programs.

In response to questions from Committee members, Mr. Smith concluded by stating that if a dam is abandoned or located on an abandoned piece of property, the state would eventually have to step in and take some action regarding the dam. He reiterated that if an abandoned dam is only used for recreation and not needed for flood control, the dam could be removed at a one time cost and there would be no need for the state to pay for ongoing inspections and repairs.

Representative Oxley adjourned the meeting at 1:51 p.m.